



September 5, 2001

Mr. Miles K. Risley  
Senior Assistant City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR2001-3943

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151534.

The City of Victoria (the "city") received a request for the employment records of Michael Todd. You indicate that you have released some of the requested information. However, you claim that the remainder of the responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 6103(a) of title 26 of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989). Our office has specifically held that W-4 forms must be withheld in their entirety. Open Records Decision No. 600 at 9 (1992). Therefore, you must withhold the marked W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

We also note that the submitted information contains an accident report form included among the documents you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code

states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the city with two of the three pieces of information. Thus, you must withhold the accident report under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. We have marked the report that must be withheld under section 552.101 of the Government Code.

Next, we address your contention that the social security numbers contained in the submitted information are confidential and excepted from disclosure under section 552.101.<sup>1</sup> Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I). However, to the extent the city obtained or maintained the submitted social security numbers pursuant to a provision of law enacted after October 1, 1990, the numbers are confidential under section 405(c)(2)(C)(viii)(I) of the Social Security Act.

Next, you contend that portions of the submitted information are confidential under common law privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal financial information generally is excepted from public disclosure under common

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<sup>1</sup>You have blacked out many of the social security numbers, addresses, telephone numbers, and driver's license numbers contained in the submitted information. Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. By totally obliterating portions of the submitted information, you made it impossible for this office to review those portions of the information. You thus failed to request a decision in the manner prescribed by section 552.301. In the future, failure to comply completely with section 552.301 will result in a decision that the requested information is public and must be released in its entirety. *See* Gov't Code §§ 552.006, .301(e), .302.

law privacy, except to the extent the information reflects a transaction between the employee and the governmental body. Open Records Decision Nos. 600 at 9-12 (1992) (information about public employee's participation in a group insurance program, retirement benefits beneficiaries, tax exempt reimbursement accounts, and direct deposit), 545 (1990) (information about a public employee's participation in a deferred compensation plan). Upon review of the submitted information, we agree that some of the information constitutes personal financial information that is confidential under common law privacy.

We further note that the submitted documents contain information that is excepted from disclosure under section 552.117. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Here, the submitted documents contain the personal information of Michael Todd. You have submitted a form in which Mr. Todd elected to keep his home address and telephone number, social security number, and family member information confidential. Consequently, Mr. Todd's personal information is excepted from disclosure under section 552.117.

The submitted information also appears to contain Texas driver's license information. Under section 552.130 of the Government Code, information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state" is excepted from required public disclosure. Consequently, the submitted driver's license information is excepted from disclosure under section 552.130.

We note, however, that in this instance the requestor has a special right of access to some of the information that is otherwise excepted under sections 552.101, 552.117, and 552.130. Section 552.023 of the Government Code provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." It appears that the requestor represents the attorney for Michael Todd. Furthermore, the Social Security Act, the doctrine of common law privacy, section 552.117, and section 552.130 are designed to protect individuals' privacy interests. Therefore, while Mr. Todd's personal financial information, social security number, home address, home telephone number, family member information, and driver's license information is generally excepted from disclosure, it must be released where, as here, the requestor represents the individual to whom the information relates.

In summary, you must withhold the marked W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. Likewise, you must withhold the marked peace officer's accident report under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. You must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

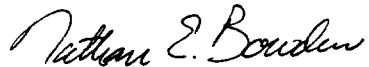
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 151534

Enc: Submitted documents

c: Mr. Jason Hernandez  
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(w/o enclosures)